100 of the Women's Charter. It is submitted that the section in the Women's Charter which empowers the Court to vary a subsisting order is section 106 and that only empowers the Court to vary or rescind any subsisting order for maintenance.

Counsel for the defendant says that this Court has the power to vary by virtue of section 31 of the English Matrimonial Causes Act, 1973. In any case the Order of October 5, 1983, has not taken effect as the decree *nisi* has not been made absolute and the Court has power under its inherent jurisdiction as there has been non-disclosure or full and frank disclosure by K.T. Arasu of his assets.

There is no substance in counsel's submission.

I am of the view that the Court has no power to vary the Order of October 5, 1983. In any case even if it has the power I would not vary it. K.T. Arasu in the divorce proceedings claimed that the said property was bought by him alone and that the defendant never contributed in any way towards the purchase or maintenance of this property. Many affidavits and counter-affidavits were filed by the parties.

In her affidavit sworn to on October 1, 1983, paragraph 7, the defendant said:

"As regards maintenance, I wish to state that I only require a nominal maintenance of $1.00 from the respondent but I urge this Honourable Court to divide the proceeds of sale of the matrimonial assets equally between the respondent and me as this is only fair and just in view of my contributions and my sole effort in bringing up the family without maintenance from the respondent and also in view of the debts I have incurred in bringing up my family."

It was the defendant who had sought the sale of the said property under section 100 of the Women's Charter so as to claim a half share in the proceeds of sale. K.T. Arasu had maintained that the said property should not be sold as he would then have no house to stay; that he was not eligible for an H.D.B. flat and that it would be beyond his means to buy a private house. I had in the divorce proceedings weighed the facts relevant to the issue before me before making the Order of October 5, 1983, namely, the claim of the defendant that she had made a bigger contribution towards the purchase of the said property and that she had incurred debts for supporting the family. Now the defendant wants me to take into consideration the savings of the husband of $123,000 which the husband had not disclosed. Even if the husband had disclosed the sum of $123,000 it would not have affected my decision and I would still have decided that the property be sold and the proceeds be equally divided. At the time of the divorce proceedings the husband, who was 60 years old, was unemployed and not in receipt of any income and was living on his savings.

Therefore I declare that the joint tenancy of the said property had been severed in the lifetime of K.T. Arasu. There will be order in terms of prayers (2), (3), (4) and (5) of the Originating Summons.

Order accordingly.

Solicitors: *David Gerald & Partners; Jacob Chacko & Associates; V. Ramakrishnan & Co.*

MALAYAN CREDITS PROPERTIES (PTE.) LTD. v. BETZ PTE. LTD.

[O.C.J. (Thean J.) January 16, 1986]

[Singapore – Originating Summons No. 318 of 1984]

Landlord & Tenant – Whether notice to determine tenancy valid – "Tenant" – Meaning of.

The plaintiffs are landlords of three blocks of apartments situate at Ardmore Park, and the defendants, during the period October 15, 1979 to February 29, 1984, were the tenants of the plaintiffs of one of the apartments. Three successive tenancies were entered into by the plaintiffs and the defendants during this period; they contained the same terms and conditions except for the rental rate.

The defendants in a letter dated December 28, 1983 informed the plaintiffs that their managing director, who had been occupying the apartment, would be returning to the United Kingdom permanently in March 1984 and gave two months' notice determining the tenancy. The notice presumably was given under clause 14 of the tenancy agreement though it did not expressly say so. The plaintiffs in a letter dated January 3, 1984 rejected this notice, stating that the defendants could not avail themselves of clause 14 to determine the tenancy as the word "Tenant" means the defendants and not an employee or officer of the defendants.

In an originating summons dated April 9, 1984, the plaintiffs sought determination of the following question: whether upon the true construction of the tenancy agreedated December 31, 1983 ("The Tenancy Agreement") made between the plaintiffs and the defendants, the tenancy was determinable by notice given by the defendants. The sole issue before the Court, therefore, lay in the construction of clause 14 of the Tenancy Agreement.

Held: (1) if the word "Tenant" is construed to mean the defendants, it will not give any meaning or purpose to the clause. A meaningful construction ought to be adopted and in such a situation, the principle of interpretation, *ut res magis valeat quam pereat*, is applicable;

(2) the word "Tenant" has to be read in the context of the whole clause and read in that context it seems clear that it is intended by the parties to mean the defendants' employee for whom they had rented the apartment;

(3) there is nothing in the other parts of the document which suggests otherwise or is inconsistent with such an intention, apart from the definition of the word "Tenant" at the commencement thereof. This intention must prevail, notwithstanding the definition.

ORIGINATING SUMMONS.

Quentin Loh Sze On for the plaintiffs.
Helen Yeo (Mrs.) for the defendants.

Cur. Adv. Vult.

Thean J.: The plaintiffs are landlords of three blocks of apartments situate at Ardmore Park, and the defendants, during the period October 15, 1979 to February 29, 1984 were the tenants of the plaintiffs of one of the apartments, namely: Unit 02-09 situate on the second floor of the block of apartments known as the "Langkawi". In respect of this apartment, three successive tenancy agreements had been entered into between the plaintiffs and the defendants covering the period. The first tenancy agreement dated November 5, 1979 created a term of 24 months commencing from October 15, 1979, and on the expiry thereof, the second tenancy agreement dated October 21, 1981 was made for a similar term of 24 months commencing from October 15, 1981. Immediately prior to the expiry of the second tenancy agreement, the parties negotiated for a renewal of the term for a further period of 12 months commencing October 15, 1983, and accordingly, the third tenancy agreement dated December 31, 1983 expressed to cover this period was made between them. The three tenancy agreements contained substantially the same terms and conditions, save and except that the rent paid under the first tenancy agreement was much less than those paid under the two later tenancy agreements.

After the commencement of the term under the third tenancy agreement, the defendants, by a letter dated December 28, 1983, informed the plaintiffs that their managing director, A.J. Pearson, who had been occupying the apartment, would be returning to the United Kingdom permanently in March 1984 and gave two months' notice determining the tenancy. That notice presumably was given under clause 14 of the tenancy agreement, though it did not expressly say so. The plaintiffs by their letter of January 3, 1984 rejected this notice, stating that the defendants could not avail themselves of clause 14 to determine the tenancy. Notwithstanding the rejection of their notice, the defendants on February 29, 1984, delivered possession of the apartment to the plaintiffs, which was accepted without prejudice to the respective rights of the parties.

On April 9, 1984, the plaintiffs took out this originating summons seeking for the determination of the following question, namely: whether upon the true construction of the tenancy agreement dated December 31, 1983 ("the Tenancy Agreement") and made between the plaintiffs and the defendants, and in the events which have happened, the tenancy granted thereunder was determinable by notice given by the defendants. The issue before me is purely one of construction of clause 14 of the Tenancy Agreement which reads as follows:

> "14. In the event of the Tenant being required by the Immigration or other governmental authority or by any law or regulations or having for vocational reasons to leave the Republic of Singapore either permanently or for a foreseeable period of not less than one year (strict proof whereof shall be supplied by the Tenant to the Landlord) the tenancy hereby created may be terminated by the Tenant giving to the Landlord at least two(2) calendar months prior notice in writing or by the Tenant paying to the Landlord two(2) calendar months rent and service charge in lieu of such notice. ~~Subject to the proviso that the lease would have commenced for 6 months prior to the service of notice.~~"

For completeness I have set out above the proviso to clause 14 which had been expressly deleted, though nothing really turns on this proviso or its deletion.

As evident from this clause, the problem is centred on the word "Tenant" in the first line of the clause. Mr. Loh on behalf of the plaintiffs submitted that the word "Tenant" means the defendants and not an employee or officer of the defendants. He pointed out that the terms "Tenant" and "Occupiers" have each been defined in the Tenancy Agreement: "Tenant" has been defined at the commencement of the Tenancy Agreement to mean the defendants and "Occupiers" has been defined in clause 5(xviii) thereof. Clause 14, he submitted, is a standard clause applicable to all types of tenants: individuals

as well as companies, whether the companies are incorporated in Singapore or elsewhere, though with reference to companies that clause has a limited application. The main obstacle in the way of his argument on this point is the expression "to leave the Republic of Singapore". He sought to overcome it by contending that a company leaves Singapore when it closes its office or place of business here and establishes a new office or place of business in another country; in other words, when it moves its office or place of business elsewhere. This argument of his, in my view, gives a very strained meaning to the expression: "to leave the Republic of Singapore". Even in the situation as he described, it is not correct or appropriate to say that the company "leaves the Republic of Singapore"; indeed it would be a misuse of language to say so.

Mrs. Yeo on behalf of the defendants contended that if the word "Tenant" in clause 14 means the defendants, then clause 14 will become functionless. I agree. An analysis of clause 14 will demonstrate this conclusion. Clause 14 applies in any of the following events: (i) if the Tenant is required by the immigration authority to leave Singapore; (ii) if the Tenant is required by other governmental authority or by any law or regulations to leave Singapore, or (iii) if the Tenant has for vocational reasons to leave Singapore, and in all such events, either permanently or for a foreseeable period of not less than one year. The first and third events obviously apply only to individuals, as matters such as immigration and vocational reasons concern individuals and not companies. The second event also has no application for reasons I have given; the expression "to leave the Republic of Singapore" is just inappropriate and inapplicable to the defendants, being a company incorporated in Singapore.

Accordingly, in my judgment, if the word "Tenant" is construed to mean the defendants, it will not give any meaning or purpose to the clause. A meaningful construction ought to be adopted, and in such a situation, the principle of interpretation, *ut res magis valeat quam pereat*, is applicable. As stated in paragraph 785 of Vol. 1 of *Chitty* on Contracts (25th Edn.):

> "785 Saving the document. In order to give effect to the intention of the parties and to "save" the document, if possible, the court will adopt various expedients. This rule is often expressed in the phrase *ut res magis valeat quam pereat*. That is to say, if by any reasonable construction the intention of the parties can be arrived at and that intention carried out consistently with the rules of law, the court will take that course. So the court will go to the trouble of reforming the document either by restricting, supplying, transposing, rejecting or modifying words or terms in the document, provided the intention of the parties is plain in spite of the words."

Adopting this approach, one then must ascertain the intention of the parties as can be gathered from the Tenancy Agreement and in particular clause 14. Obviously the word "Tenant" has to be read in the context of the whole clause and read in that context it seems to me clear that it is intended by the parties to mean the defendants' employee for whom they had rented the apartment. There is nothing in the other parts of the document which suggests otherwise or is inconsistent with such an intention, apart from the definition of the word "Tenant" at the commencement thereof. This intention must prevail, notwithstanding the definition. In this connection, the following passage from paragraph 766 of Vol. 1 of *Chitty* on Contracts is apposite:

> "766 Intention of the parties. The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say, the meaning of the document or of a particular part of it is to be sought in the document itself: "One must consider the meaning of the words used, not what one may guess to be the intention of the parties." However, no contract is made in a vacuum. In construing the document, the court must therefore always have regard to its commercial purpose and the factual background against which it was made.
>
> Further, the law does not approach the task of construction with too nice a concentration on individual words. "The common and universal principle ought to be applied: namely, that [an agreement] ought to receive that construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent."

In so far as the subject matter of the Tenancy Agreement, the factual background against which it was made and the commercial purpose thereof are relevant; they support the construction I have arrived at. The premises comprised in the Tenancy Agreement is a residential apartment situate in a prime residential area. It is an apartment which the defendants had rented for occupation by their executive officer. It is not in dispute that at the time when the first tenancy agreement was negotiated the plaintiffs knew that the apartment was rented by the defendants for occupation by the defendants' managing director, J. A. Pearson. The defendants requested for a "diplomatic

clause" from the plaintiffs and clause 14, with a slight difference (which is not material here), was provided by the plaintiffs; it was set out on a separate slip of paper and pasted onto the first tenancy agreement. When the second tenancy agreement was executed, a slip of paper containing clause 14 was similarly pasted onto the agreement. The same exercise was carried out when the third tenancy agreement, the Tenancy Agreement, was executed. It must have been contemplated by the parties that A. J. Pearson might have to leave Singapore in certain events, and clause 14 was designed for the purpose.

In my judgment, for reasons given above the word "Tenant" at the commencement of the clause must be construed to mean "the Tenant's employee, A. J. Pearson". On the basis that A. J. Pearson had to return to the United Kingdom permanently for vocational reasons (a fact agreed to by both parties), clause 14 was available to the defendants, and they could by giving not less than two months' notice terminate the tenancy, as they did. In the event I make an order in terms as agreed to by the parties.

Order accordingly.

Solicitors: *Cooma Lau & Loh & M. Karthigesu; Chor Pee & Co.*

A MALAYSIAN REPORTS

RAMASAMY A/L SHANMUGAM v. STATE GOVERNMENT OF PENANG AND GOVERNMENT OF MALAYSIA

B **[S.C. (Mohamed Azmi S.C.J.) January 20, 1986]**

[Kuala Lumpur – Supreme Court Civil Application No. 17 of 1985]

Constitutional Law – Application for declaration that Straits Settlements Ordinance is invalid and void – Application for leave to bring application – Hindu Endowments Ordinance (S.S. Cap. 175) – Federal Constitution, arts. 3, 4, 7, 11, 74, 75, 128, 160 & 162.

In this case the applicant applied for a declaration that the Hindu Endowments Ordinance 1906 (Straits Settlements Cap. 175) is invalid and void. He applied for leave under Article 4(4) of the Federal Constitution.

Held: proceeding for a declaration under Article 4(4) read with Article 128(1)(a) applies only to post-Merdeka law whether Federal or State. Since the Hindu Endowment Ordinance (S.S. Cap. 175) is a pre-Merdeka law the present application should not have been brought to the Supreme Court as a Court of first instance.

Cases referred to:

(1) *Rethana* v. *Government of Malaysia* [1984] 2 M.L.J. 52.

(2) *Assa Singh* v. *Mentri Besar, Johore* [1969] 2 M.L.J. 30.

F SUPREME COURT.

V. Muthusamy for the applicant.

Mohamed Shaari bin Yusoff (State Legal Adviser, Penang) for the State Government.

T. Selventhiranathan (Senior Federal Counsel) G for the Government of Malaysia.

Mohamed Azmi S.C.J.: When dismissing the application for leave under Article 4 clause (4) of the Federal Constitution, I indicated that I would state my reasons. I now proceed to do so.

H

The applicant, a Hindu by religion is the Vice-Chairman of the Hindu Sangam, Seberang Perai, Penang. His application is for leave to commence proceedings in the Supreme Court for three declaratory orders and one order for consequential I relief. Mr. V. Muthusamy, counsel for the applicant has however withdrawn two of the prayers in the notice of motion leaving only the following two prayers:–

(1) a declaration that the Hindu Endowments